

## PART 13—CLAIMS COLLECTION STANDARDS

### Subpart A—General

- Sec.
- 13.1 Purpose and scope.
  - 13.2 Definitions.
  - 13.3 Interagency claims.
  - 13.4 Other remedies.
  - 13.5 Claims involving criminal activities or misconduct.
  - 13.6 Subdivision of claims not authorized.
  - 13.7 Omission not a defense.

### Subpart B—Collection

- 13.8 Collection rule.
- 13.9 Initial notice.
- 13.10 Aggressive collection actions; documentation.
- 13.11 Interest, penalty and administrative costs.
- 13.12 Interest and charges pending waiver or review.
- 13.13 Contracting for collection services.
- 13.14 Use of credit reporting agencies.
- 13.15 Taxpayer information.
- 13.16 Liquidation of collateral.
- 13.17 Suspension or revocation of license or eligibility.
- 13.18 Installment payments.
- 13.19 Analysis of costs; automation; prevention of overpayments, delinquencies or defaults.

### Subpart C—Administrative Offset

- 13.20 Administrative offset of general debts.
- 13.21 Employee salary offset—general.
- 13.22 Salary offset when EPA is the creditor agency.
- 13.23 Salary offset when EPA is not the creditor agency.

### Subpart D—Compromise of Debts

- 13.24 General.
- 13.25 Standards for compromise.
- 13.26 Payment of compromised claims.
- 13.27 Joint and several liability.
- 13.28 Execution of releases.

### Subpart E—Suspension of Collection Action

- 13.29 Suspension—general.
- 13.30 Standards for suspension.

### Subpart F—Termination of Debts

- 13.31 Termination—general.
- 13.32 Standards for termination.

### Subpart G—Referrals

- 13.33 Referrals to the Department of Justice.

### Subpart H—Referral of Debts to IRS for Tax Refund Offset

- 13.34 Purpose.
- 13.35 Applicability and scope.
- 13.36 Administrative charges.
- 13.37 Notice requirement before offset.
- 13.38 Review within the Agency.

- 13.39 Agency determination.
- 13.40 Stay of offset.

AUTHORITY: 5 U.S.C. 552a, 5512, and 5514; 31 U.S.C. 3711 *et seq.* and 3720A; 4 CFR parts 101–10.

SOURCE: 53 FR 37270, Sept. 23, 1988, unless otherwise noted.

### Subpart A—General

#### § 13.1 Purpose and scope.

This regulation prescribes standards and procedures for the Environmental Protection Agency's (EPA's) collection and disposal of debts. These standards and procedures are applicable to all debts for which a statute, regulation or contract does not prescribe different standards or procedures. This regulation covers EPA's collection, compromise, suspension, termination, and referral of debts.

#### § 13.2 Definitions.

(a) *Debt* means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, grants, contracts, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources. As used in this regulation, the terms *debt* and *claim* are synonymous.

(b) *Delinquent debt* means any debt which has not been paid by the date specified by the Government for payment or which has not been satisfied in accordance with a repayment agreement.

(c) *Debtor* means an individual, organization, association, corporation, or a State or local government indebted to the United States or a person or entity with legal responsibility for assuming the debtor's obligation.

(d) *Agency* means the United States Environmental Protection Agency.

(e) *Administrator* means the Administrator of EPA or an EPA employee or official designated to act on the Administrator's behalf.

(f) *Administrative offset* means the withholding of money payable by the United States to, or held by the United States for, a person to satisfy a debt the person owes the Government.

(g) *Creditor agency* means the Federal agency to which the debt is —wed.

(h) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount described in 5 CFR 581.105 (b) through (f). These deductions include, but are not limited to: Social security

### § 13.3

withholdings; Federal, State and local tax withholdings; health insurance premiums; retirement contributions; and life insurance premiums.

(i) *Employee* means a current employee of the Federal Government including a current member of the Armed Forces.

(j) *Person* means an individual, firm, partnership, corporation, association and, except for purposes of administrative offsets under subpart C and interest, penalty and administrative costs under subpart B of this regulation, includes State and local governments and Indian tribes and components of tribal governments.

(k) *Employee salary offset* means the administrative collection of a debt by deductions at one or more officially established pay intervals from the current pay account of an employee without the employee's consent.

(l) *Waiver* means the cancellation, remission, forgiveness or non-recovery of a debt or debt-related charge as permitted or required by law.

#### § 13.3 Interagency claims.

This regulation does not apply to debts owed EPA by other Federal agencies. Such debts will be resolved by negotiation between the agencies or by referral to the General Accounting Office (GAO).

#### § 13.4 Other remedies.

(a) This regulation does not supersede or require omission or duplication of administrative proceedings required by contract, statute, regulation or other Agency procedures, *e.g.*, resolution of audit findings under grants or contracts, informal grant appeals, formal appeals, or review under a procurement contract.

(b) The remedies and sanctions available to the Agency under this regulation for collecting debts are not intended to be exclusive. The Agency may impose, where authorized, other appropriate sanctions upon a debtor for inexcusable, prolonged or repeated failure to pay a debt. For example, the Agency may stop doing business with a grantee, contractor, borrower or lender; convert the method of payment under a grant or contract from an advance payment to a reimbursement method; or revoke a grantee's or contractor's letter-of-credit.

#### § 13.5 Claims involving criminal activities or misconduct.

(a) The Administrator will refer cases of suspected criminal activity or misconduct to the EPA Office of Inspector General. That office has the responsibility for investigating or referring the matter, where appropriate, to the Department of Justice (DOJ), and/or returning it to the Administrator for further actions. Examples of activities which should be referred are matters involving fraud,

anti-trust violations, embezzlement, theft, false claims or misuse of Government money or property.

(b) The Administrator will not administratively compromise, terminate, suspend or otherwise dispose of debts involving criminal activity or misconduct without the approval of DOJ.

#### § 13.6 Subdivision of claims not authorized.

A claim will not be subdivided to avoid the \$20,000 limit on the Agency's authority to compromise, suspend, or terminate a debt. A debtor's liability arising from a particular transaction or contract is a single claim.

#### § 13.7 Omission not a defense.

Failure by the Administrator to comply with any provision of this regulation is not available to a debtor as a defense against payment of a debt.

### Subpart B—Collection

#### § 13.8 Collection rule.

(a) The Administrator takes action to collect all debts owed the United States arising out of EPA activities and to reduce debt delinquencies. Collection actions may include sending written demands to the debtor's last known address. Written demand may be preceded by other appropriate action, including immediate referral to DOJ for litigation, when such action is necessary to protect the Government's interest. The Administrator may contact the debtor by telephone, in person and/or in writing to demand prompt payment, to discuss the debtor's position regarding the existence, amount or repayment of the debt, to inform the debtor of its rights (*e.g.*, to apply for waiver of the indebtedness or to have an administrative review) and of the basis for the debt and the consequences of nonpayment or delay in payment.

(b) The Administrator maintains an administrative file for each debt and/or debtor which documents the basis for the debt, all administrative collection actions regarding the debt (including communications to and from the debtor) and its final disposition. Information from a debt file relating to an individual may be disclosed only for purposes which are consistent with this regulation, the Privacy Act of 1974 and other applicable law.

#### § 13.9 Initial notice.

(a) When the Administrator determines that a debt is owed EPA, he provides a written initial notice to the debtor. Unless otherwise provided by agreement, contract or order, the initial notice informs the debtor:

(1) Of the amount, nature and basis of the debt;

## § 13.11

(2) That payment is due immediately upon receipt of the notice;

(3) That the debt is considered delinquent if it is not paid within 30 days of the date mailed or hand-delivered;

(4) That interest charges and, except for State and local governments and Indian tribes, penalty charges and administrative costs may be assessed against a delinquent debt;

(5) Of any rights available to the debtor to dispute the validity of the debt or to have recovery of the debt waived (citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt), and of the possibility of assessment of interest, penalty and administrative costs; and

(6) The address, telephone number and name of the person available to discuss the debt.

(b) EPA will respond promptly to communications from the debtor. Response generally will be within 20 days of receipt of communication from the debtor.

(c) Subsequent demand letters also will advise the debtor of any interest, penalty or administrative costs which have been assessed and will advise the debtor that the debt may be referred to a credit reporting agency (see § 13.14), a collection agency (see § 13.13) or to DOJ (see § 13.33) if it is not paid.

### § 13.10 Aggressive collection actions; documentation.

(a) EPA takes actions and effective follow-up on a timely basis to collect all claims of the United States for money and property arising out of EPA's activities. EPA cooperates with other Federal agencies in their debt collection activities.

(b) All administrative collection actions are documented in the claim file, and the bases for any compromise, termination or suspension of collection actions is set out in detail. This documentation, including the Claims Collection Litigation Report required § 13.33, is retained in the appropriate debt file.

### § 13.11 Interest, penalty and administrative costs.

(a) *Interest.* EPA will assess interest on all delinquent debts unless prohibited by statute, regulation or contract.

(1) Interest begins to accrue on all debts from the date of the initial notice to the debtor. EPA will not recover interest where the debt is paid within 30 days of the date of the notice. EPA will assess an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate) as prescribed and published by the

Secretary of the Treasury in the FEDERAL REGISTER and the Treasury Fiscal Requirements Manual Bulletins, unless a different rate is necessary to protect the interest of the Government. EPA will notify the debtor of the basis for its finding that a different rate is necessary to protect the interest of the Government.

(2) The Administrator may extend the 30-day period for payment where he determines that such action is in the best interest of the Government. A decision to extend or not to extend the payment period is final and is not subject to further review.

(3) The rate of interest, as initially assessed, remains fixed for the duration of the indebtedness. If a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(4) Interest will not be assessed on interest charges, administrative costs or later payment penalties. However, where a debtor defaults on a previous repayment agreement and interest, administrative costs and penalties charges have been waived under the defaulted agreement, these charges can be reinstated and added to the debt principal under any new agreement and interest charged on the entire amount of the debt.

(b) *Administrative costs of collecting overdue debts.* The costs of the Agency's administrative handling of overdue debts, based on either actual or average cost incurred, will be charged on all debts except those owed by State and local governments and Indian tribes. These costs include both direct and indirect costs. Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by § 13.12.

(c) *Penalties.* As provided by 31 U.S.C. 3717(e)(2), a penalty charge will be assessed on all debts, except those owned by State and local governments and Indian tribes, more than 90 days delinquent. The penalty charge will be at a rate not to exceed 6% per annum and will be assessed monthly.

(d) *Allocation of payments.* A partial payment by a debtor will be applied first to outstanding administrative costs, second to penalty assessments, third to accrued interest and then to the outstanding debt principal.

(e) *Waiver.* (1) The Administrator may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty or administrative costs, where he determines that—

(i) Waiver is justified under the criteria of § 13.25;

(ii) The debt or the charges resulted from the Agency's error, action or inaction, and without fault by the debtor; or

(iii) Collection of these charges would be against equity and good conscience or not in the best interest of the United States.

## § 13.12

(2) A decision to waive interest, penalty charges or administrative costs may be made at any time prior to payment of a debt. However, where these charges have been collected prior to the waiver decision, they will not be refunded. The Administrator's decision to waive or not waive collection of these charges is a final agency action.

### § 13.12 Interest and charges pending waiver or review.

Interest, penalty charges and administrative costs will continue to accrue on a debt during administrative appeal, either formal or informal, and during waiver consideration by the Agency; *except*, that interest, penalty charges and administrative costs will not be assessed where a statute or a regulation specifically prohibits collection of the debt during the period of the administrative appeal or the Agency review.

### § 13.13 Contracting for collection services.

EPA will use private collection services where it determines that their use is in the best interest of the Government. Where EPA determines that there is a need to contract for collection services it will—

(a) Retain sole authority to resolve any dispute by the debtor of the validity of the debt, to compromise the debt, to suspend or terminate collection action, to refer the debt to DOJ for litigation, and to take any other action under this part which does not result in full collection of the debt;

(b) Require the contractor to comply with the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), with applicable Federal and State laws pertaining to debt collection practices (*e.g.*, the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*)), and with applicable regulations of the Internal Revenue Service;

(c) Require the contractor to account accurately and fully for all amounts collected; and

(d) Require the contractor to provide to EPA, upon request, all data and reports contained in its files relating to its collection actions on a debt.

### § 13.14 Use of credit reporting agencies.

EPA reports delinquent debts to appropriate credit reporting agencies.

(a) EPA provides the following information to the reporting agencies:

(1) A statement that the claim is valid and is overdue;

(2) The name, address, taxpayer identification number and any other information necessary to establish the identity of the debtor;

(3) The amount, status and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information, EPA will:

(1) Take reasonable action to locate the debtor if a current address is not available; and

(2) If a current address is available, notify the debtor by certified mail, return receipt requested, that:

(i) The designated EPA official has reviewed the claim and has determined that it is valid and overdue;

(ii) That within 60 days EPA intends to disclose to a credit reporting agency the information authorized for disclosure by this subsection; and

(iii) The debtor can request a complete explanation of the claim, can dispute the information in EPA's records concerning the claim, and can file for an administrative review, waiver or reconsideration of the claim, where applicable.

(c) Before information is submitted to a credit reporting agency, EPA will provide a written statement to the reporting agency that all required actions have been taken. Additionally, EPA will, thereafter, ensure that the credit reporting agency is promptly informed of any substantive change in the conditions or amounts of the debt, and promptly verify or correct information relevant to the claim.

(d) If a debtor disputes the validity of the debt, the credit reporting agency will refer the matter to the appropriate EPA official. The credit reporting agency will exclude the debt from its reports until EPA certifies in writing that the debt is valid.

### § 13.15 Taxpayer information.

(a) The Administrator may obtain a debtor's current mailing address from the Internal Revenue Service.

(b) Addresses obtained from the Internal Revenue Service will be used by the Agency, its officers, employees, agents or contractors and other Federal agencies only to collect or dispose of debts, and may be disclosed to credit reporting agencies only for the purpose of their use in preparing a commercial credit report on the taxpayer for use by EPA.

### § 13.16 Liquidation of collateral.

Where the Administrator holds a security instrument with a power of sale or has physical possession of collateral, he may liquidate the security or collateral and apply the proceeds to the overdue debt. EPA will exercise this right where the debtor fails to pay within a reasonable time after demand, unless the cost of disposing of the collateral is disproportionate to its value or special circumstances

## § 13.20

require judicial foreclosure. However, collection from other businesses, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance company unless expressly required by contract or statute. The Administrator will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds and will comply with any other requirements of law or contract.

### **§ 13.17 Suspension or revocation of license or eligibility.**

When collecting statutory penalties, forfeitures, or debts for purposes of enforcement or compelling compliance, the Administrator may suspend or revoke licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay a claim. Additionally, the Administrator may suspend or disqualify any contractor, lender, broker, borrower, grantee or other debtor from doing business with EPA or engaging in programs EPA sponsors or funds if a debtor fails to pay its debts to the Government within a reasonable time. Debtors will be notified before such action is taken and applicable suspension or debarment procedures will be used. The Administrator will report the failure of any surety to honor its obligations to the Treasury Department for action under 6 U.S.C. 11.

### **§ 13.18 Installment payments.**

(a) Whenever, feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalty and administrative costs, as required by § 13.11, will be collected in a single payment. However, where the Administrator determines that a debtor is financially unable to pay the indebtedness in a single payment or that an alternative payment mechanism is in the best interest of the United States, the Administrator may approve repayment of the debt in installments. The debtor has the burden of establishing that it is financially unable to pay the debt in a single payment or that an alternative payment mechanism is warranted. If the Administrator agrees to accept payment by installments, the Administrator may require a debtor to execute a written agreement which specifies all the terms of the repayment arrangement and which contains a provision accelerating the debt in the event of default. The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment payments will be sufficient in size and frequency to liquidate the debt in not more than 3 years, unless the Administrator determines that a longer period is required. Installment payments of less than \$50 per month generally will not be accepted, but may be accepted where the debtor's fi-

nancial or other circumstances justify. If the debt is unsecured, the Administrator may require the debtor to execute a confess-judgment note with a tax carry-forward and a tax carry-back provision. Where the Administrator secures a confess-judgment note, the Administrator will provide the debtor a written explanation of the consequences of the debtor's signing the note.

(b) If a debtor owes more than one debt and designates how a voluntary installment payment is to be applied among the debts, that designation will be approved if the Administrator determines that the designation is in the best interest of the United States. If the debtor does not designate how the payment is to be applied, the Administrator will apply the payment to the various debts in accordance with the best interest of the United States, paying special attention to applicable statutes of limitations.

### **§ 13.19 Analysis of costs; automation; prevention of overpayments, delinquencies or defaults.**

(a) The Administrator may periodically compare EPA's costs in handling debts with the amounts it collects,

(b) The Administrator may periodically consider the need, feasibility, and cost effectiveness of automated debt collection operations.

(c) The Administrator may establish internal controls to identify the causes of overpayments and delinquencies and may issue procedures to prevent future occurrences of the identified problems.

## **Subpart C—Administrative Offset**

### **§ 13.20 Administrative offset of general debts.**

This subpart provides for EPA's collection of debts by administrative offset under section 5 of the Debt Collection Act of 1982 (31 U.S.C. 3716), other statutory authorities and the common law. It does not apply to offsets against employee salaries covered by §§ 13.21, 13.22 and 13.23 of this subpart. EPA will collect debts by administrative offsets where it determines that such collections are feasible and are not otherwise prohibited by statute or contract.

EPA will decide, on a case-by-case basis, whether collection by administrative offset is feasible and that its use furthers and protects the interest of the United States.

(a) *Standards.* (1) The Administrator collects debts by administrative offset if—

(i) The debt is certain in amount;

(ii) Efforts to obtain direct payment from the debtor have been, or would most likely be, unsuc-

## § 13.20

cessful or the Administrator and the debtor agree to the offset;

(iii) Offset is not expressly or implicitly prohibited by statute, regulation or contract;

(iv) Offset is cost-effective or has significant deterrent value;

(v) Offset does not substantially impair or defeat program objectives; and

(vi) Offset is best suited to further and protect the Government's interest.

(2) The Administrator may, in determining the method and amount of the offset, consider the financial impact on the debtor.

(b) *Interagency offset.* The Administrator may offset a debt owed to another Federal agency from amounts due or payable by EPA to the debtor, or may request another Federal agency to offset a debt owed to EPA. The Administrator may request the Internal Revenue Service to offset an overdue debt from a Federal income tax refund due a debtor where reasonable attempts to obtain payment have failed. Interagency offsets from employee salaries will be made in accordance with the procedures contained in §§ 13.22 and 13.23.

(c) *Multiple debts.* Where moneys are available for offset against multiple debts of a debtor, it will be applied in accordance with the best interest of the Government as determined by the Administrator on a case-by-case basis.

(d) *Statutory bar to offset.* Administrative offset will not be made more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not have been known through the exercise of reasonable care by the officer responsible for discovering or collecting the debt. For purposes of offset, the right to collect a debt accrues when the appropriate EPA official determines that a debt exists (e.g., contracting officer, grant award official, etc.), when it is affirmed by an administrative appeal or a court having jurisdiction, or when a debtor defaults on a payment agreement, whichever is latest. An offset occurs when money payable to the debtor is first withheld or when EPA requests offset from money held by another agency.

(e) *Pre-offset notice.* Before initiating offset, the Administrator sends the debtor written notice of:

(1) The basis for and the amount of the debt as well as the Agency's intention to collect the debt by offset if payment or satisfactory response has not been received within 30 days of the notice;

(2) The debtor's right to submit an alternative repayment schedule, to inspect and copy agency records pertaining to the debt, to request review of the determination of indebtedness or to apply for waiver under any available statute or regulation; and

(3) Applicable interest, penalty charges and administrative costs.

(f) *Alternative repayment.* The Administrator may, at the Administrator's discretion, enter into a repayment agreement with the debtor in lieu of offset. In deciding whether to accept payment of the debt by an alternative repayment agreement, the Administrator may consider such factors as the amount of the debt, the length of the proposed repayment period, whether the debtor is willing to sign a confess-judgment note, past Agency dealings with the debtor, documentation submitted by the debtor indicating that an offset will cause undue financial hardship, and the debtor's financial ability to adhere to the terms of a repayment agreement. The Administrator may require financial documentation from the debtor before considering the repayment arrangement.

(g) *Review of administrative determination.* (1) A debt will not be offset while a debtor is seeking either formal or informal review of the validity of the debt under this section or under another statute, regulation or contract. However, interest, penalty and administrative costs will continue to accrue during this period, unless otherwise waived by the Administrator. The Administrator may initiate offset as soon as practical after completion of review or after a debtor waives the opportunity to request review.

(2) The Administrator may administratively offset a debt prior to the completion of a formal or informal review where the determines that:

(i) Failure to take the offset would substantially prejudice EPA's ability to collect the debt; and

(ii) The time before the first offset is to be made does not reasonably permit the completion of the review procedures. (Offsets taken prior to completion of the review process will be followed promptly by the completion of the process. Amounts recovered by offset but later found not to be owed will be refunded promptly.)

(3) The debtor must provide a written request for review of the decision to offset the debt no later than 15 days after the date of the notice of the offset unless a different time is specifically prescribed. The debtor's request must state the basis for the request for review.

(4) The Administrator may grant an extension of time for filing a request for review if the debtor shows good cause for the late filing. A debtor who fails timely to file or to request an extension waives the right to review.

(5) The Administrator will issue, no later than 60 days after the filing of the request, a written final decision based on the evidence, record and applicable law.

## § 13.22

### § 13.21 Employee salary offset—general.

(a) *Purpose.* This section establishes EPA's policies and procedures for recovery of debts owed to the United States by installment collection from the current pay account of an employee.

(b) *Scope.* The provisions of this section apply to collection by salary offset under 5 U.S.C. 5514 of debts owed EPA and debts owed to other Federal agencies by EPA employees. This section does not apply to debts owed EPA arising from travel advances under 5 U.S.C. 5705, employee training expenses under 5 U.S.C. 4108 and to other debts where collection by salary offset is explicitly provided for or prohibited by another statute.

(c) *References.* The following statutes and regulations apply to EPA's recovery of debts due the United States by salary offset:

(1) 5 U.S.C. 5514, as amended, governing the installment collection of debts;

(2) 31 U.S.C. 3716, governing the liquidation of debts by administrative offset;

(3) 5 CFR part 550, subpart K, setting forth the minimum requirements for executive agency regulations on salary offset; and

(4) 4 CFR parts 101–105, the Federal Claims Collection Standards.

### § 13.22 Salary offset when EPA is the creditor agency.

(a) *Entitlement to notice, hearing, written response and decision.* (1) Prior to initiating collection action through salary offset, EPA will first provide the employee with the opportunity to pay in full the amount owed, unless such notification will compromise the Government's ultimate ability to collect the debt.

(2) Except as provided in paragraph (b) of this section, each employee from whom the Agency proposes to collect a debt by salary offset under this section is entitled to receive a written notice as described in paragraph (c) of this section.

(3) Each employee owing a debt to the United States which will be collected by salary offset is entitled to request a hearing on the debt. This request must be filed as prescribed in paragraph (d) of this section. The Agency will make appropriate hearing arrangements which are consistent with law and regulations. Where a hearing is held, the employee is entitled to a written decision on the following issues:

(i) The determination of the Agency concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and the Agency.

(b) *Exceptions to entitlement to notice, hearing, written response and final decision.* The procedural requirements of paragraph (a) of this section are not applicable to any adjustment of pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program (such as health insurance) requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. However, if the amount to be recovered was accumulated over more than four pay periods the full procedures prescribed under paragraph (d) of this section will be extended to the employee.

(c) *Notification before deductions begin.* Except as provided in paragraph (b) of this section, deductions will not be made unless the employee is first provided with a minimum of 30 calendar days written notice. Notice will be sent by certified mail (return receipt requested), and must include the following:

(1) The Agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The Agency's intention to collect the debt by means of deductions from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date and duration of the intended deductions. (The proposed beginning date for salary offset cannot be earlier than 30 days after the date of notice, unless this would compromise the Government's ultimate ability to resolve the debt);

(4) An explanation of the requirements concerning interest, penalty and administrative costs;

(5) The employee's right to inspect and copy all records relating to the debt or to request and receive a copy of such records;

(6) If not previously provided, the employee's right to enter into a written agreement for a repayment schedule differing from that proposed by the Agency where the terms of the proposed repayment schedule are acceptable to the Agency. (Such an agreement must be in writing and signed by both the employee and the appropriate EPA official and will be included in the employee's personnel file and documented in the EPA payroll system);

(7) The right to a hearing conducted by a hearing official not under the control of the Administrator, if a request is filed;

(8) The method and time for requesting a hearing;

(9) That the filing of a request for hearing within 15 days of receipt of the original notification will stay the assessment of interest, penalty and administrative costs and the commencement of collection proceedings;

(10) That a final decision on the hearing (if requested) will be issued at the earliest practical date, but no later than 60 days after the filing of

## § 13.22

the request, unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That knowingly false or frivolous statements, representations or evidence may subject the employee to—

(i) Disciplinary procedures under 5 U.S.C. chapter 75 or any other applicable statutes or regulations;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001 and 1002 or other applicable statutory authority; or

(iii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority;

(12) Any other rights and remedies available under statutes or regulations governing the program for which the collection is being made; and

(13) That amounts paid or deducted for the debt, except administrative costs and penalty charges where the entire debt is not waived or terminated, which are later waived or found not owed to the United States will be promptly refunded to the employee.

(d) *Request for hearing.* An employee may request a hearing by filing a written request directly with the Director, Financial Management Division (PM–226F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The request must state the bases upon which the employee disputes the proposed collection of the debt. The request must be signed by the employee and be received by EPA within 15 days of the employee's receipt of the notification of proposed deductions. The employee should submit in writing all facts, evidence and witnesses which support his/her position to the Director, Financial Management Division, within 15 days of the date of the request for a hearing. The Director, Financial Management Division, will arrange for the services of a hearing official not under the control of the Administrator and will provide the hearing official with all documents relating to the claim.

(e) *Requests for hearing made after time expires.* Late requests for a hearing may be accepted if the employee can show that the delay in filing the request for a hearing was due to circumstances beyond the employee's control.

(f) *Form of hearing, written response and final decision.* (1) Normally, a hearing will consist of the hearing official making a decision based upon a review of the claims file and any materials submitted by the debtor. However, in instances where the hearing official determines that the validity of the debt turns on an issue of veracity or credibility which cannot be resolved through review of documentary evidence, the hearing official at his discretion may afford the debtor an opportunity for an oral hearing. Such oral hearings will consist of an informal conference before a hearing official in

which the employee and the Agency will be given the opportunity to present evidence, witnesses and argument. If desired, the employee may be represented by an individual of his/her choice. The Agency shall maintain a summary record of oral hearings provided under these procedures.

(2) Written decisions provided after a request for hearing will, at a minimum, state the facts evidencing the nature and origin of the alleged debt; and the hearing official's analysis, findings and conclusions.

(3) The decision of the hearing official is final and binding on the parties.

(g) *Request for waiver.* In certain instances, an employee may have a statutory right to request a waiver of overpayment of pay or allowances, e.g., 5 U.S.C. 5584 or 5 U.S.C. 5724(i). When an employee requests waiver consideration under a right authorized by statute, further collection on the debt will be suspended until a final administrative decision is made on the waiver request. However, where it appears that the Government's ability to recover the debt may be adversely affected because of the employee's resignation, termination or other action, suspension of recovery is not required. During the period of the suspension, interest, penalty charges and administrative costs will not be assessed against the debt. The Agency will not duplicate, for purposes of salary offset, any of the procedures already provided the debtor under a request for waiver.

(h) *Method and source of collection.* A debt will be collected in a lump-sum or by installment deductions at established pay intervals from an employee's current pay account, unless the employee and the Agency agree to alternative arrangements for payment. The alternative payment schedule must be in writing, signed by both the employee and the Administrator and will be documented in the Agency's files.

(i) *Limitation on amount of deduction.* The size and frequency of installment deductions generally will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payments will be in amounts sufficient to liquidate the debt in three years or less. Installment payments of less than \$25 normally will be accepted only in the most unusual circumstances.

(j) *Duration of deduction.* If the employee is financially unable to pay a debt in a lump-sum or the amount of the debt exceeds 15 percent of disposable pay, collection will be made in installments. Installment deductions will be made over



## § 13.22

the period of active duty or employment except as provided in paragraph (a)(1) of this section.

(k) *When deductions may begin.* (1) Deductions to liquidate an employee's debt will begin on the date stated in the Agency's notice of intention to collect from the employee's current pay unless the debt has been repaid or the employee has filed a timely request for hearing on issues for which a hearing is appropriate.

(2) If the employee has filed a timely request for hearing with the Agency, deductions will begin after the hearing official has provided the employee with a final written decision indicating the amount owed the Government. Following the decision by the hearing official, the employee will be given 30 days to repay the amount owed prior to collection through salary offset, unless otherwise provided by the hearing official.

(l) *Liquidation from final check.* If the employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset from subsequent payments of any nature due the employee (e.g., final salary payment, lump-sum leave, etc.).

(m) *Recovery from other payments due a separated employee.* If the debt cannot be liquidated by offset from any final payment due the employee on the date of separation, EPA will liquidate the debt, where appropriate, by administrative offset from later payments of any kind due the former employee (e.g., retirement pay). Such administrative offset will be taken in accordance with the procedures set forth in § 13.20.

(n) *Employees who transfer to another Federal agency.* If an EPA employee transfers to another Federal agency prior to repaying a debt owed to EPA, the following action will be taken:

(1) The appropriate debt-claim form specified by the Office of Personnel Management (OPM) will be completed and certified to the new paying office by EPA. EPA will certify: That the employee owes a debt; the amount and the basis for the debt; the date on which payment is due; the date the Government's rights to collect the debt first accrued; and that EPA's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) The new paying agency will be advised of the amount which has already been collected, the number of installments and the commencement date for the first installment, if other than the next officially established pay period. EPA will also identify to the new paying agency the actions it has taken and the dates of such actions.

(3) EPA will place or will arrange to have placed in the employee's official personnel file the information required by paragraphs (n) (1) and (2) of this section.

(4) Upon receipt of the official personnel file from EPA, the new paying agency will resume collection from the employee's current pay account and will notify both the employee and EPA of the resumption.

(o) *Interest, penalty and administrative cost.* EPA will assess interest and administrative costs on debts collected under these procedures. The following guidelines apply to the assessment of these costs on debts collected by salary offset:

(1) A processing and handling charge will be assessed on debts collected through salary offset under this section. Where offset begun prior to the employee's receipt of the 30-day written notice of the proposed offset, processing and handling costs will only be assessed after the expiration of the 30-day notice period and after the completion of any hearing requested under paragraph (d) of this section or waiver consideration under paragraph (g) of this section.

(2) Interest will be assessed on all debts not collected within 30 days of either the date of the notice where the employee has not requested a hearing within the allotted time, completion of a hearing pursuant to paragraph (d) of this section, or completion of waiver consideration under paragraph (g) of this section, whichever is later. Interest will continue to accrue during the period of the recovery.

(3) Deductions by salary offset normally begin prior to the time for assessment of a penalty. Therefore, a penalty charge will not be assessed unless deductions occur more than 120 days from the date of notice to the debtor and penalty assessments have not been suspended because of waiver consideration by EPA.

(p) *Non-waiver of right by payment.* An employee's payment under protest of all or any portion of a debt does not waive any rights which the employee may have under either these procedures or any other provision of law.

(q) *Refunds.* EPA will promptly refund to the employee amounts paid or deducted pursuant to this section, the recovery of which is subsequently waived or otherwise found not owing to the United States. Refunds do not bear interest unless specifically authorized by law.

(r) *Time limit for commencing recovery by salary setoff.* EPA will not initiate salary offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the right to collect the debt were not known and could not have been known through the exercise of reasonable care by the Government official responsible for discovering and collecting such debts.

## § 13.23

### § 13.23 Salary offset when EPA is not the creditor agency.

The requirements below apply when EPA has been requested to collect a debt owed by an EPA employee to another Federal agency.

(a) *Format for the request for recovery.* (1) The creditor agency must complete fully the appropriate claim form specified by OPM.

(2) The creditor agency must certify to EPA on the debt claim form: The fact that the employee owes a debt; the date that the debt first accrued; and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM and send it to the Director, Financial Management Division (PM-226F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(3) If the collection is to be made in installments, the creditor agency must also advise EPA of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment, if a date other than the next established pay period.

(4) Unless the employee has consented in writing to the salary deductions or signed a statement acknowledging receipt of the required procedures and this information is attached to the claim form, the creditor agency must indicate the actions it took under its procedures for salary offset and the dates of such actions.

(b) *Processing of the claim by EPA—(1) Incomplete claims.* If EPA receives an improperly completed claim form, the claim form and all accompanying material will be returned to the requesting (creditor) agency with notice that OPM procedures must be followed and a properly completed claim form must be received before any salary offset can be taken. The notice should identify specifically what is needed from the requesting agency for the claim to be processed.

(2) *Complete claims.* If the claim procedures in paragraph (a) of this section have been properly completed, deduction will begin on the next established pay period. EPA will not review the merits of the creditor agency's determinations with respect to the amount or validity of the debt as stated in the debt claim form. EPA will not assess a handling or any other related charge to cover the cost of its processing the claim.

(c) *Employees separating from EPA before a debt to another agency is collected—(1) Employees separating from Government service.* If an employee begins separation action before EPA collects the total debt due the creditor agency, the following actions will be taken:

(i) To the extent possible, the balance owed the creditor agency will be liquidated from subsequent payments of any nature due the employee from EPA in accordance with § 13.22(1);

(ii) If the total amount of the debt cannot be recovered, EPA will certify to the creditor agency and the employee the total amount of EPA's collection; and

(iii) If EPA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments, it will forward a copy of the claim form to the agency responsible for making such payments as notice that a debt is outstanding. EPA will also send a copy of the claim form to the creditor agency so that it can file a certified claim against the payments.

(2) *Employees who transfer to another Federal agency.* If an EPA employee transfers to another Federal agency before EPA collects the total amount due the creditor agency, the following actions will be taken:

(i) EPA will certify the total amount of the collection made on the debt; and

(ii) The employee's official personnel folder will be sent to the new paying agency. (It is the responsibility of the creditor agency to ensure that the collection is resumed by the new paying agency.)

## Subpart D—Compromise of Debts

### § 13.24 General.

EPA may compromise claims for money or property where the claim, exclusive of interest, penalty and administrative costs, does not exceed \$20,000. Where the claim exceeds \$20,000, the authority to accept the compromise rests solely with DOJ. The Administrator may reject an offer of compromise in any amount. Where the claim exceeds \$20,000 and EPA recommends acceptance of a compromise offer, it will refer the claim with its recommendation to DOJ for approval. The referral will be in the form of the Claims Collection Litigation Report (CCLR) and will outline the basis for EPA's recommendation. EPA refers compromise offers for claims in excess of \$100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530, unless otherwise provided by Department of Justice delegations or procedures. EPA refers offers of compromise for claims of \$20,000 to \$100,000 to the United States Attorney in whose judicial district the debtor can be found. If the Administrator has a debtor's firm written offer for compromise which is substantial in amount but the Administrator is uncertain as to whether the offer should be accepted, he may refer the offer and the supporting data to DOJ or GAO for action.

### § 13.25 Standards for compromise.

(a) EPA may compromise a claim pursuant to this section if EPA cannot collect the full amount

## § 13.29

because the debtor does not have the financial ability to pay the full amount of the debt within a reasonable time, or the debtor refuses to pay the claim in full and the Government does not have the ability to enforce collection in full within a reasonable time by enforced collection proceedings. In evaluating the acceptability of the offer, the Administrator may consider, among other factors, the following:

(1) *Individual debtors.* (i) Age and health of the debtor;

(ii) Present and potential income;

(iii) Inheritance prospects;

(iv) The possibility that assets have been concealed or improperly transferred by the debtor;

(v) The availability of assets or income which may be realized by enforced collection proceedings; or

(vi) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection.

(2) *Municipal and quasi-municipal debtors.* (i) The size of the municipality or quasi-municipal entity;

(ii) The availability of current and future resources sufficient to pay the debt (e.g., bonding authority, rate adjustment authority, or taxing authority); or

(iii) The ratio of liabilities (both short and long term) to assets.

(3) *Commercial debtors.* (i) Ratio of assets to liabilities;

(ii) Prospects of future income or losses; or

(iii) The availability of assets or income which may be realized by enforced collection proceedings.

(b) EPA may compromise a claim, or recommend acceptance of a compromise to DOJ, where there is substantial doubt concerning the Government's ability to prove its case in court for the full amount of the claim, either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases will fairly reflect the probability of prevailing on the legal issues involved, considering fully the availability of witnesses and other evidentiary data required to support the Government's claim. In determining the litigative risks involved, EPA will give proportionate weight to the likely amount of court costs and attorney fees the Government may incur if it is unsuccessful in litigation.

(c) EPA may compromise a claim, or recommend acceptance of a compromise to DOJ, if the cost of collection does not justify the enforced collection of the full amount of the debt. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, taking into

consideration the time it will take to effect collection. Costs of collection may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collection justifies enforced collection of the full amount, EPA may consider the positive effect that enforced collection of the claim may have on the collection of other similar claims.

(d) Statutory penalties, forfeitures or debts established as an aid to enforcement and to compel compliance may be compromised where the Administrator determines that the Agency's enforcement policy, in terms of deterrence and securing compliance (both present and future), will be adequately served by accepting the offer.

### § 13.26 Payment of compromised claims.

The Administrator normally will not approve a debtor's request to pay a compromised claim in installments. However, where the Administrator determines that payment of a compromise by installments is necessary to effect collection, a debtor's request to pay in installments may be approved. Normally, where installment repayment is approved, the debtor will be required to execute a confess-judgment agreement which accelerates payment of the balance due upon default.

### § 13.27 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one debtor until the other or others pay their proportionate share. The amount of a compromise with one debtor is not precedent in determining compromises from other debtors who have been determined to be jointly and severally liable on the claim.

### § 13.28 Execution of releases.

Upon receipt of full payment of a claim or the amount compromised, EPA will prepare and execute a release on behalf of the United States. The release will include a provision which voids the release if it was procured by fraud, misrepresentation, a false claim or by mutual mistake of fact.

## Subpart E—Suspension of Collection Action

### § 13.29 Suspension—general.

The Administrator may suspend the Agency's collection actions on a debt where the outstanding debt principal does not exceed \$20,000, the Government cannot presently collect or enforce collection of any significant sum from the debtor, the prospects of future collection justify retention of

## § 13.30

the debt for periodic review and there is no risk of expiration of the statute of limitations during the period of suspension. Additionally, the Administrator may waive the assessment of interest, penalty charges and administrative costs during the period of the suspension. Suspension will be for an established time period and generally will be reviewed at least every six months to ensure the continued propriety of the suspension. DOJ approval is required to suspend debts exceeding \$20,000. Unless otherwise provided by DOJ delegations or procedures, the Administrator refers requests for suspension of debts of \$20,000 to \$100,000 to the United States Attorney in whose district the debtor resides. Debts exceeding \$100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval.

### § 13.30 Standards for suspension.

(a) *Inability to locate debtor.* The Administrator may suspend collection on a debt where he determines that the debtor cannot be located presently but that there is a reasonable belief that the debtor can be located in the future.

(b) *Financial condition of debtor.* The Administrator may suspend collection action on a claim when the debtor owns no substantial equity in real or personal property and is unable to make payment on the claim or effect a compromise but the debtor's future financial prospects justify retention of the claim for periodic review, provided that:

(1) The applicable statute of limitations will not expire during the period of the suspension, can be tolled or has started running anew;

(2) Future collection can be effected by offset, notwithstanding the 10-year statute of limitations for administrative offsets; or

(3) The debtor agrees to pay interest on the debt and suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) *Request for waiver or administrative review—mandatory.* The Administrator will suspend collection activity where a statute provides for mandatory waiver consideration or administrative review prior to agency collection of a debt. The Administrator will suspend EPA's collection actions during the period provided for the debtor to request review or waiver and during the period of the Agency's evaluation of the request.

(d) *Request for waiver or administrative review—permissive.* The Administrator may suspend collection activities on debts of \$20,000 or less during the pendency of a permissive waiver or administrative review where he determines that:

(1) There is a reasonable possibility that waiver will be granted and the debtor may be found not owing the debt (in whole or in part);

(2) The Government's interest is protected, if suspension is granted, by the reasonable assurance that the debt can be recovered if the debtor does not prevail; or

(3) Collection of the debt will cause undue hardship to the debtor.

(e) *Refund barred by statute or regulation.* The Administrator will ordinarily suspend collection action during the pendency of his consideration of a waiver request or administrative review where statute and regulation preclude refund of amounts collected by the Agency should the debtor prevail. The Administrator may decline to suspend collection where he determines that the request for waiver or administrative review is frivolous or was made primarily to delay collection.

## Subpart F—Termination of Debts

### § 13.31 Termination—general.

The Administrator may terminate collection actions and write-off debts, including accrued interest, penalty and administrative costs, where the debt principal does not exceed \$20,000. If the debt exceeds \$20,000, EPA obtains the approval of DOJ in order to terminate further collection actions. Unless otherwise provided for by DOJ regulations or procedures, requests to terminate collection on debts in excess of \$100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval. Debts in excess of \$20,000 but \$100,000 or less are referred to the United States Attorney in whose judicial district the debtor can be found.

### § 13.32 Standards for termination.

A debt may be terminated where the Administrator determines that:

(a) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for available judicial remedies, the debtor's ability to pay, and the exemptions available to the debtor under State and Federal law;

(b) The debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has expired, and the prospects of collecting by offset are too remote to justify retention of the claim;

(c) The cost of further collection action is likely to exceed the amount recoverable;

(d) The claim is determined to be legally without merit; or

(e) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment have failed.

## § 13.37

### Subpart G—Referrals

#### § 13.33 Referrals to the Department of Justice.

(a) *Prompt referral.* The Administrator refers to DOJ for litigation all claims on which aggressive collection actions have been taken but which could not be collected, compromised, suspended or terminated. Referrals are made as early as possible, consistent with aggressive agency collection action, and within the period for bringing a timely suit against the debtor.

(1) Unless otherwise provided by DOJ regulations or procedures, EPA refers for litigation debts of more than \$100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(2) Unless otherwise provided by DOJ regulations or procedures, EPA refers for litigation debts of \$100,000 or less to the United States Attorney in whose judicial district the debtor can be found.

(b) *Claims Collection Litigation Report (CCLR).* Unless an exception has been granted by DOJ, the CCLR is used for referrals of all administratively uncollectible claims to DOJ and is used to refer all offers of compromise.

### Subpart H—Referral of Debts to IRS for Tax Refund Offset

Source: 59 FR 651, Jan. 5, 1994, unless otherwise noted.

#### § 13.34 Purpose.

This subpart establishes procedures for the Environmental Protection Agency (EPA) to refer past-due debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing debts to EPA. It specifies the Agency procedures and the rights of the debtor applicable to claims for the payment of debts owed to EPA.

#### § 13.35 Applicability and scope.

(a) This subpart implements 31 U.S.C. 3720A, which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C.

3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Agency against amounts payable to or on behalf of the debtor by or on behalf of the Agency;

(4) With respect to which EPA has given the taxpayer at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or not legally enforceable, has considered evidence presented by such taxpayer, if any, and has determined that an amount of such debt is past-due and legally enforceable;

(5) Has been disclosed by EPA to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed \$100.00;

(6) With respect to which EPA has notified or has made a reasonable attempt to notify the taxpayer that the debt is past-due and, unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(7) Is at least \$25.00; and

(8) All other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations at 26 CFR 301.6402-6 relating to the eligibility of a debt for tax return offset have been satisfied.

#### § 13.36 Administrative charges.

In accordance with § 13.11, all administrative charges incurred in connection with the referral of a debt to the IRS shall be assessed on the debt and thus increase the amount of the offset.

#### § 13.37 Notice requirement before offset.

A request for reduction of an IRS tax refund will be made only after EPA makes a determination that an amount is owed and past-due and provides the debtor with 60 days written notice. EPA's notice of intention to collect by IRS tax refund offset (Notice of Intent) will state:

(a) The amount of the debt;

(b) That unless the debt is repaid within 60 days from the date of EPA's Notice of Intent, EPA intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all accumulated interest and other charges;

(c) That the debtor has a right to present evidence that all or part of the debt is not past-due or not legally enforceable; and

(d) A mailing address for forwarding any written correspondence and a contact name and phone number for any questions.

## § 13.38

### § 13.38 Review within the Agency.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

- (1) Send a written request for a review of the evidence to the address provided in the notice;
- (2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable; and
- (3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60-day period.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within 60 days will result in an automatic referral of the debt to the IRS without further action by EPA.

(c) *Review of the evidence.* EPA will consider all available evidence related to the debt. Within 30 days, if feasible, EPA will notify the debtor whether EPA has sustained, amended, or cancelled its determination that the debt is past-due and legally enforceable.

### § 13.39 Agency determination.

(a) Following review of the evidence, EPA will issue a written decision.

(b) If EPA either sustains or amends its determination, it shall notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund. If EPA cancels its original determination, the debt will not be referred to IRS.

### § 13.40 Stay of offset.

If the debtor timely notifies the EPA that he or she is exercising the right described in § 13.38(a) and timely submits evidence in accordance with § 13.38(b), any notice to the IRS will be stayed until the issuance of a written decision which sustains or amends its original determination.